



C.R.P.(MD)No.1232 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 21.07.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.R.P.(MD)No.1232 of 2017

and

CMP(MD)No.6012 of 2017

Kasthuri

... Petitioner/Petitioner/ Plaintiff

Vs.

1.Kanagammal (Late)

2.The Sub Registrar No.2,

Virudhunagar Town,

Virudhunagar.

3.S.Narayanasamy

4.R.Krishnaveni

... Respondents/Respondents / Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.484 of 2016 in O.S.No.199 of 2010, on the file of the Principal District Munsif Court, Virudhunagar, on 04.01.2017.

For Petitioner : Mr.Lakshmi Gopinathan
M/s.Polax Legal Solutions

For Respondents : Mr.I.Suthakaran for R4

: Mr.Senthil Ayyanar,
Government Advocate for R2



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ORDER

The instant Civil Revision Petition has been filed, against the dismissal order passed in I.A.No.484 of 2016 in O.S.No.199 of 2010, on the file of the Principal District Munsif Court, Virudhunagar, on 04.01.2017.

2. Short facts which give rise to the instant Revision Petition, are that:

The revision petitioner herein is the plaintiff and the respondent herein are the defendants before the trial Court. The revision petitioner filed a suit for permanent injunction, restraining the defendants to alienate or encumber the suit property. The said application was dismissed by the trial Court. Against the order of the trial Court, the plaintiff has filed the instant revision petition.

3. It appears that even prior to the filing of the suit, on 30.07.2010 itself, the suit property was sold by the first defendant in favour of the third defendant and thereafter, the third defendant sold the property



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to the fourth defendant on 13.06.2011. It appears that thereafter, the revision petitioner has filed an impleading application to implead the subsequent purchasers, viz., third and fourth defendants.

4. From the submission of the either side, now, the suit is at part heard stage. It appears that when the suit is at part heard stage, the revision petitioner / plaintiff came forward with an application for an amendment, seeking to amend the plaint for a declaratory relief in respect of the third schedule property and also for the relief of declaration, to set aside the sale deed, which stands in the name of the fourth defendant.

5. The said application was stoutly objected by the respondents on the ground that such amendment is hit by limitation and that any amendment, after trial, should not be allowed and no due diligence shown by the plaintiff / revision petitioner.

6. I have given my anxious consideration to the either side submission.



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7. The sum and substance of the learned respondents' side counsel's argument is that the amendment sought for can't be entertained on the ground of limitation. If we peruse the schedule of amendment, the petitioner sought for two amendments. One is for declaration in respect of third schedule property and another is to set aside the sale deed. In respect of declaration, the limitation period is 12 years under Article 65 of the Limitation Act. Whereas, the revision petitioner has filed the amendment petition, within a period of 12 years from the date of alleged transaction. In respect of the other prayer, namely, to set aside the sale deed, as per Article 56 of the Limitation Act, the suit should have been filed within a period of 3 years, when the factum of registration become known to the plaintiff.

8. Here, though the revision petitioner / plaintiff has impleaded the subsequent purchasers, unfortunately, the realisation come late to seek the relief of declaration, to set aside sale. In the mean while three years period had lapsed. Therefore, the prayer for setting aside the sale deed become barred by limitation under Article 56 of the Limitation Act.



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9. The learned counsel for the respondents would submit that when the suit was pending at part heard stage, the petitioner filed an amendment application. In this regard, the learned counsel for the respondents would invite the attention of this Court to the proviso to Order 6 Rule 17 of C.P.C. Wherein, it has been mandated that no application for amendment shall be allowed, after trial has commenced, unless the Court has come to the conclusion, in respect of due diligence shown by the petitioner.

10. In this regard, the learned counsel for the petitioner would submit that they came to know about the alleged sale transaction. After that they have taken steps to implead the subsequent purchasers, but, failed to seek the prayer for declaration to set aside sale deed within three years. In this regard, the very submission of the learned counsel for the petitioner appears to be very reasonable. Therefore, the submission of the learned counsel for the respondents due diligence could not be accepted at all.



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11. However, the learned trial Judge has referred to Article 56 of the Limitation Act and rejected the amendment. This Court finds that Article 56 of the Limitation Act is only applicable to the amendments in respect of the second prayer [i(b)] sought for in the amendment application. Whereas in respect of the first prayer sought for in the amendment application, is well within the limitation.

12. Therefore, this Court is of the view that the very order of the learned trial Judge is liable to be interfered with, in respect of the declaratory relief sought for under 1 A, over the suit property. In respect of the other aspect of the amendment, this petition would **faul**.

13. In the result, the Civil Revision Petition is **partly allowed**, as indicated above, on condition that the petitioner to pay a sum of **Rs.5000/- to the private respondents / respondents 3 and 4** herein within a period of four weeks from the date of receipt of copy of this order, failing which, the revision petition shall stand automatically dismissed without any further reference to this Court. Thereby the respondent is at liberty to file additional written statement if necessary.



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13. Considering the year of the suit, this Court expect the trial Court to dispose of the suit as expeditiously as possible preferably within a period of 6 months. Both the parties are directed to co-operate for the speedy trial. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Ls

21.07.2023

To

1.The Principal District Munsif Court,
Virudhunagar.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN.,J.

Ls

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